EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P. Debtor.	Chapter 11 Case No. 19-34054 (SGJ) JAMES DONDERO, HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., NEXPOINT ADVISORS, L.P., THE DUGABOY INVESTMENT TRUST, THE GET GOOD TRUST, and NEXPOINT REAL ESTATE PARTNERS, LLC, F/K/A HCRE PARTNERS, LLC, A DELAWARE LIMITED LIABILITY COMPANY'S APPENDIX TO MEMORANDUM OF LAW IN SUPPORT OF RENEWED MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 455

APPENDIX TO MEMORANDUM OF LAW IN SUPPORT OF AMENDED RENEWED MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 455

James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Get Good Trust, and NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC (collectively, "Movants") file this Appendix to Memorandum of Law in Support of Amended Renewed Motion to Recuse Pursuant to 28 U.S.C § 455:

Exhibit	Description	Appendix Page No.
A	December 3, 2019, Hearing Transcript	APP. 0001 – APP. 0010
B	January 9, 2020, Hearing Transcript	APP. 0011 – APP. 0021
C	February 19, 2020, Hearing Transcript	APP. 0022 – APP. 0034
D	June 30, 2020, Hearing Transcript	APP. 0035 – APP. 0053

W	August 4, 2021, Hearing Transcript	APP. 0240 – APP. 0246

Dated: October 17, 2022

Respectfully submitted,

CRAWFORD, WISHNEW & LANG PLLC

/s/ Michael J. Lang
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Attorneys for Movants

CERTIFICATE OF SERVICE

The undersigned certifies that on October 17, 2022, a true and correct copy of the above and foregoing document was served on all parties and counsel set to receive notice by the Court's ECF system.

/s/ Michael J. Lang
Michael J. Lang

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

- -x

In the Matter of:

HIGHLAND CAPITAL MANAGEMENT, L.P., Case No.

Debtor. 19-12239(CSS)

- -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

December 2, 2019

10:07 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

CHIEF U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

Acis, learned all about Acis' relationship to Highland. But the real issue before Your Honor is what does that have to do with this debtor, this debtor's assets and liabilities, and this debtor's operations. And as my comments will show, we think that's a significantly overblown argument.

Your Honor, during their presentation, Counsel really strayed a little bit from what the motion and the joinders sort of said. There they went through a painstaking analysis of the various factors supporting venue. I know Your Honor said that over three factors, you don't find that helpful, but the courts have relied on a series of factors.

And I think the reason why they have strayed away from that and focused on the committee being the one to support the transfer-of-venue motion and the facts of the Acis case is because when you pare it down, the actual factors demonstrate that there is no way the committee can carry its burden to demonstrate that venue should be transferred.

However -- Your Honor pointed to this at the beginning, in mentioning comments about forum-shopping -- the committee and Acis are really being disingenuous, and they have not told you the real reason that they want the case before Judge Jernigan.

At the first-day hearing, Your Honor, Acis said they intended to file a motion for an appointed trustee. The committee has told the debtor it intends to file a motion to

appoint a trustee after this hearing. The motion has not yet been filed, Your Honor, because they want Judge Jernigan to rule on that motion. And it's not because she's familiar with this debtor's business, this debtor's assets, or this debtor's liabilities, because she generally is not. It is because she formed negative views regarding certain members of the debtor's management that the committee and Acis hope will carry over to this case.

The convenience of the parties and the interests of justice and how this case is so unique are just a pretext. They want a trustee to run the debtor, and they want Judge Jernigan and not Your Honor to rule on that motion. That, Your Honor, is not a proper reason to transfer venue, but rather a transparent litigation ploy.

Similarly, Acis also wants the case to proceed in its home court where it has enjoyed success in litigating against the debtor. Your Honor mentioned the conflicts-of-interest theories. They're not just conflicts of interest between two jointly administered debtors. These go to the crux of what the Acis case is about and significant claims against the debtor.

The Court may ask, appropriately -- and the Court did -- why would the debtor file the case in Delaware? Chapter 11 is all about a fresh start. The debtor recognized concerns that the creditors had with certain aspects of its pre-petition conduct, and proactively appointed Brad Sharp as chief

restructuring officer with expanded powers, to oversee the debtor's operations.

Mr. Sharp worked with the debtor and Counsel to craft a protocol for transactions that would be subject to increased transparency. The debtor didn't have to do that. As Your Honor mentioned at the first-day hearing, the debtor operates its business in the ordinary course. But given the circumstances surrounding this case, given the history, we felt, and the CRO, importantly, felt it was important to get on the table what the debtor, through the CRO, believed was ordinary and what was not, so we could have a transparent discussion, discussion that, while we've made headway with the committee, we have not yet been able to come to an agreement.

The debtor filed the case in this district because it wanted a judge to preside over this case that would look at what's going on with this debtor, with this debtor's management, this debtor's post-petition conduct, without the baggage of what happened in a previous case, which contrary to what Acis and the committee says, has very little to do with this debtor.

These form insufficient grounds, Your Honor, to overturn the debtor's choice of venue, and the motion should be denied.

I would like to now walk through the statutory analysis, something that Counsel avoided, because again, I

think it highlights the weakness of their argument.

It is clear that the Delaware venue is proper, and 1408 says the places where a Chapter 11 debtor can file the case. As the vast majority of debtors who file cases in this district, the debtor filed here because it was domiciled in Delaware. It is a Delaware LP. But it goes further than that. 99.94 percent of its LP interests are owned by Delaware entities. And the general partner, Strand Advisors, is a Delaware general partner.

While many cases, Your Honor, before this court, rely on the domicile of one affiliate to bring other non-Delaware related affiliates before the court, that's not the case here. All you have, virtually, are Delaware entities, through the ownership structure.

As I will also discuss in a few moments, Your Honor, domicile is not the only connection that this debtor has to this district, as significant litigation matters involving the debtor, including those commenced by committee members, that was the catalyst to the filing, are pending in Delaware. Accordingly, the committee acknowledges, as they must, that Delaware is, of course, a proper venue.

However, they rely on 1412 which sets forth the standard -- test that the movant has to meet in order to transfer venue, either for the convenience of the parties or the interest of the justice.

willingness to hire Delaware Counsel.

The last argument --

THE COURT: Even when you do have mom and -- again, to comment on reality, even when you do have mom-and-pop creditors in businesses that are very locally focused, general practice today is to make their claims irrelevant, in that to the extent they have avoidance claims, they're paid on the first day. Their real concern is whether the business will continue or not.

Now, it's certainly true that pension claims are important, and proofs of claim are important. But we have many -- all courts have many procedures in place to ensure that those types of creditors can participate without having to go to the courthouse.

MR. POMERANTZ: Yes. So, Your Honor, Judge Gross also mentioned that in the Restaurants Acquisition case, which was a Texas-based --

THE COURT: He's a smart guy.

MR. POMERANTZ: We'll be sorry to see him go, Your Honor.

THE COURT: Yeah, absolutely.

MR. POMERANTZ: Which was a Texas-based restaurant chain that had more of a local flair. But he made the comments Your Honor made.

The last argument the committee makes is that Texas is

more convenient. And this is really the crux, which I'll spend some time over the next few minutes.

Texas is more convenient -- convenient -- because the Texas bankruptcy court, where Acis is pending has, in their words, already expended great time and effort familiarizing itself with the debtor and its operations. You've heard statements like "learning curve". You heard statements about everything that the debtor -- that Judge Jernigan has found out about this debtor, and how important and how helpful it is, and how Your Honor will be behind the learning curve. We just don't buy that, Your Honor.

And aside from that argument, the arguments that the committee makes for transfer are arguments that could be made in any case before Your Honor.

THE COURT: Yeah, I was going to say that's kind of an interesting argument, because actually it assumes Judge Jernigan's going to ignore the rules of evidence in making factual findings, because you're limited to the record before you on a specific motion. And what fact you may have learned with regard to something a person has done, maybe that goes into questions of credibility on cross-examination or direct testimony, but to actually base your decision on a fact that's not in the record for the specific proceeding would be improper.

MR. POMERANTZ: Look, I agree, Your Honor. And the

familiarity with the type of business -- if I wasn't speaking to Your Honor or your brethren or many other judges around the country, I'd say well, maybe there are certain judges who haven't dealt with large financial services company, may not know what a CLO, may not know what a hedge fund is or private equity fund is. I'm very confident that Your Honor has had many cases with sophisticated financial instruments, likely CLO obligations, so that Your Honor not only has a good base of knowledge that would give you the same base of knowledge that Judge Jernigan has, but as we've also found, you are a fairly quick study and that I have no doubt that you could come up-to-speed without very little effort.

So their argument is a grossly overstated interpretation of what the Acis case was about and that what was learned in that case has any relevance. As a part -- as a result of the Acis plan confirmation, Acis is no longer part of the debtor's organizational structure. The debtor owns no equity in Acis. And the debtor no longer provides any advisory services to Acis.

We admit that Judge Jernigan conducted many hearings, and she issued several lengthy opinions, and she heard from a variety of witnesses. And I'm sure Your Honor -- if Your Honor has not -- Your Honor might read the opinions that she wrote that are attached to the exhibits, the plan confirmation opinion, the arbitration opinion, the involuntary opinion; and

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.

December 3, 2019

CLARA RUBIN DATE

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EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	January 9, 2020
	)	9:30 a.m. Docket
Debtor.	)	
	)	DEBTOR'S MOTION TO COMPROMISE
	)	CONTROVERSY WITH OFFICIAL
	)	COMMITTEE OF UNSECURED
	)	CREDITORS [281]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtors:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Debtors:	Melissa S. Hayward Zachery Z. Annable HAYWARD & ASSOCIATES, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104

MS. LAMBERT: Well, I mean, either that or we need to clear the room.

THE COURT: I've read the arbitration award.

MS. LAMBERT: Right.

THE COURT: It's in my brain.

MS. LAMBERT: Right. Okay.

THE COURT: Uh-huh.

MS. LAMBERT: And so one of the arguments here today is that the U.S. Trustee is representing the SEC and representing other Government agencies and things. No. Obviously, that is not the U.S. Trustee --

THE COURT: I didn't hear that.

MS. LAMBERT: Okay. The -- one of the positions has been, in the papers, is, well, that we don't have standing to raise their issues. And that's true.

THE COURT: Okay.

MS. LAMBERT: But the problem is that the U.S. Trustee has been constrained from discussing those issues with the SEC. The arbitration award is very relevant to the SEC's oversight. I anticipate the evidence today will be that the SEC, after the financial crisis of 2008, imposed restrictions on this Debtor on breach of fiduciary duty issues. I anticipate that the arbitration findings would be very relevant to whether those issues are ongoing or not.

THE COURT: Okay. Let me weigh in. I view the legal

standard that this Court has to weigh today as being: Is the Debtor proposing something that is reflective of sound business judgment, reasonable business judgment? And to the extent this is a compromise of controversies with the Committee, is this fair and equitable and in the best interest of the estate?

And as Mr. Pomerantz has said, you know, a lot of this maybe doesn't even need Court approval. But to the extent there are aspects of this that are appropriate to seek Court approval on, you know, this is my task. I have to look at what's presented, and is this reflective of sound business judgment? Is this fair and equitable? Is it in the best interest?

So, assuming there are tons of bad facts here reflected in the arbitration award, reflected in other evidence, bad facts that might justify a trustee, a Chapter 11 trustee, is this nevertheless, what's proposed today, a reasonable compromise of, you know, the trustee arguments the Committee could make or, you know, is this a reasonable framework for going forward? Okay?

So I guess what I'm saying is I'm confused about, you know, do I need to look at the arbitration award? Do we need to have evidence of all of that? I can assume that there are terrible facts out there that might justify a trustee, but I'm looking at what's proposed. Is this a fair and equitable way

to resolve the disputes? Is it sound business judgment? Frankly, is it a pragmatic solution here to preserve value? So that's the legal standard I have in my mind here.

MS. LAMBERT: Yes, Your Honor.

THE COURT: Okay.

MS. LAMBERT: The standard is whether it is fair and equitable to resolve the issues in the Chapter 11 trustee motion, and it is the U.S. Trustee's position that they are not resolved by this. And how are they not resolved? Number one, they're not resolved because the problems that led to the breach of fiduciary duty issues and findings are more pervasive, both based on this Court' finding in the *Acis* case and in the arbitration court's finding in Mr. Dondero. Other officers are implicated.

THE COURT: But how --

MS. LAMBERT: Other employees are implicated.

THE COURT: Okay. I feel like maybe we're talking at each other, not getting each other. I've got a proposed solution here to totally change the playing field, if you will. Bring in incredibly qualified people to --

MS. LAMBERT: Those people --

THE COURT: -- to change out the, you know, the person that you say breached fiduciary duties, the, you know, mismanagement, whatever bad labels we have here, but bring in a clean slate.

very compelling appeal. Among them, certainly, the Committee that's negotiated this term sheet retains the right at any time to move for a Chapter 11 trustee if it believes there are grounds. The Committee is granted standing to pursue estate claims, certain estate claims right off the bat, without having to come back and ask the Court, without having to rely on the Debtor to pursue that. There are document production provisions, document preservation provisions, a shared privilege negotiated, that are very powerful tools for the Committee, and certainly operating protocols that have been negotiated regarding the Debtor's operations that are very powerful tools for the Committee.

I said many times during the *Acis* case -- those who were here will remember -- that the company, *Acis*, was not a great fit for Chapter 11. Lots of companies aren't great fits for Chapter 11, I suppose, but the kind of business it was was kind of tough to maneuver in Chapter 11. Human beings and their expertise create value. And while we had a Chapter 11 trustee, a stranger come in and take control over Acis, you know, there's great uncertainty whether that stranger is going to be able to preserve value and have the smooth transition into Chapter 11 that's really going to be the best fit.

Here, as I've said earlier, the legal standard I view as controlling here is 363 and whether what has been proposed reflects reasonable business judgment. Is there a sound

business justification for proposing the independent slate of directors at the GP level for the Debtor, the protocols, the negotiation with the Committee, the document sharing, the standing given to them? Does all of this reflect reasonable business judgment? And I find, quite clearly, it does. I find it to be a pragmatic solution to the Committee's concerns about existing management and control.

And I think I used the words "fair and equitable," not just Ms. Lambert, because it is also presented to the Court as a 9019 compromise of disputes with the Committee, and we traditionally use a fair and equitable and best interest of the estate analysis in this context. So, to the extent that applies, I do find this a fair and equitable way of resolving the disputes with the Committee, and I find this to be in the best interest of the estate. So I do approve this.

And by approving this motion, I'm approving the term sheet as it's been presented, the various terms therein, the exhibits thereto. I'm specifically approving the new independent directors, the document management and preservation process, the standing to the Committee over certain of the estate claims, the reporting requirements, the operating protocols, the whole bundle of provisions.

Now, there is one specific thing I want to say about the role of Mr. Dondero. When Ms. Patel got up and talked about the newest language that has been added to the term sheet, she

highlighted in particular the very last sentence on Page 2 of the term sheet, the sentence reading, "Mr. Dondero shall not cause any related entity to terminate any agreements with the Debtor." Her statement that that was important, it really resonated with me, because, you know, as I said earlier, I can't extract what I learned during the *Acis* case, it's in my brain, and we did have many moments during the *Acis* case where the Chapter 11 trustee came in and credibly testified that, whether it was Mr. Dondero personally or others at Highland, they were surreptitiously liquidating funds, they were changing agreements, assigning agreements to others. They were doing things behind the scenes that were impacting the value of the Debtor in a bad way.

So not only do I think that language is very important, but I am going to require that language to be put in the order. Okay? So we're not just going to have an order approving the term sheet that has that language. I want language specifically in the order. You know, you can figure out where the appropriate place to stick it in the order is, but I want specific language in here regarding Mr. Dondero's role. I also -- the language in there that his role as an employee of the Debtor will be subject at all times to the supervision, direction, and authority of the Debtors, I want that language in there as well. Let's go ahead and put the language in there that at any time, in any event, the

independent directors can determine he's no longer going to be retained. I want that in the order.

And I'm sure most of you can read my mind why, but I want it crystal clear that if he violates these terms, he's violated a federal court order, and contempt will be one of the tools available to the Court. He needs to understand that. Mr. Ellington needs to understand that. You know, if there are any games behind the scene, not only do I expect the Committee is going to come in and highlight that to the Court and file a motion for a trustee or whatever, but we're going to have a contempt of court issue.

So, anybody want to respond to that?

MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski Stang Ziehl & Jones.

We hear Your Honor. What I thought I'd do now is I have a clean redline of the order, of course not including the provision you just requested, --

THE COURT: Uh-huh.

MR. POMERANTZ: -- which we will go back and upload and hope to get an order signed by Your Honor today, if you're around. But to go over the other changes, the changes to Jefferies, the other language changes I discussed before. I gave a copy to Ms. Lambert and to the Committee. May I approach with a --

THE COURT: You may.

MR. POMERANTZ: Thank you.

THE COURT: Okay. All right. (Pause.) All right. The form of order looks fine to me. Obviously, you'll add the Dondero-related language, and we may have further wording tweaks negotiated with the CLO Issuers. But, again, I approve all of this. I didn't say on the record the compensation, but certainly I am approving that as reasonable. I expect these three directors are going to be working very, very hard. And so, as you said, not 50,000-foot level monitoring, actually rolling up sleeves on-site, so I think the compensation is reasonable.

MR. POMERANTZ: Thank you, Your Honor. We will submit an order shortly that includes Your Honor's language requested.

THE COURT: Okay.

MR. POMERANTZ: Are you around this afternoon?

THE COURT: I am around, --

MR. POMERANTZ: Okay.

THE COURT: -- so just pick up the phone or send an email to Traci, my courtroom deputy, --

MR. POMERANTZ: Yes.

THE COURT: -- so she can tell me, "It's in your queue to sign."

MR. POMERANTZ: She has been extremely helpful and responsive.

THE COURT: All right. Very good. I'll sign your order on the CRO, then.

MR. DEMO: Okay. Thank you, Your Honor.

THE COURT: All right. Well, if there's nothing else, I'll be on the lookout for your orders. And, again, if you could coordinate with Traci to make sure she's clear on everything you need set on the 21st.

MR. POMERANTZ: Thank you very much, Your Honor.

THE COURT: All right.

MR. CLEMENTE: Thank you, Your Honor.

MR. DEMO: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 11:54 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/10/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas February 19, 2020 9:30 a.m.
Debtor.	)	MOTIONS

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:	Greg Demo John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Debtor:	Melissa S. Hayward Zachery Z. Annable HAYWARD & ASSOCIATES, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539

the original motion but which the Debtor no longer seeks to pursue?

A One of the matters that was pending when we took office was an appeal, and I believe it was still in the District Court, and that related to an alleged conflict of interest by the Winstead firm. And so there was an objection to their fees and an appeal concerning payment of Winstead fees. And the Board has decided not to go forward with that appeal.

Q Okay. So the Board -- did you hear the opening from Acis's counsel that charged that the Debtor was just doing more scorched-earth litigation tactics? Did you hear that charge?

A I heard that, yes.

Q Okay. But yet the Board has instructed Foley not to pursue the Winstead matter; is that right?

A That's correct.

Q And just again, for the record, why did the Board make that decision?

A The Board made that decision because we just thought it was in the best interest of the Debtor and this estate not to do that.

Q And did the Debtor see any benefit to pursuing that particular litigation?

A You know, there -- a benefit could be articulated, but we decided not to pursue it.

Q Okay. So, that, plus the Neutra appeal, are two -- I mean, I apologize, withdrawn. That, plus the DAF matter, are two examples where the Board exercised its judgment not to pursue pending litigation; is that fair?
A That's correct.
Q Okay. Is the Board supportive of the Debtor's application to retain Foley for the three matters you have described?
A It is.
Q And without revealing privileged communications, can you describe generally the diligence that the Board conducted to reach that decision?
A Well, we met with some of the people that work at Highland. We met with the Debtor's attorneys, the Pachulski firm. We did have a couple of meetings with Ms. Patel and Mr. Terry. Some of us have reviewed the pleadings, some more than others. And, well, we may have done other things, but those are the ones that come to mind right now.
Q I don't know if you mentioned it, but did you confer with Ms. O'Neil?
A Oh, yes, we did. We talked with Ms. O'Neil about it.
Q Okay. And what was the purpose of the diligence that you just described for the Court?
A Well, ultimately, what we as a board were trying to do was to conduct kind of a cost-benefit analysis to the estate: How much will this potentially cost us? What's the potential

upside of pursuing it? And based upon that cost-benefit analysis, we thought that this was the best thing to do.

Q Okay. Let's just focus on a couple of very narrow 327(e) issues. Is the Debtor seeking to retain Foley to act as general bankruptcy counsel?

A No.

Q And which firm serves as general bankruptcy counsel?

A That would be the Pachulski firm.

Q Okay. And do you know whether Foley Gardere represented the Debtor's interest in each of the three matters that you've described?

A It has been representing the Debtor previously.

Q Okay. So let's talk about those three matters. The first one I believe you said was with respect to the representation of the Debtor in connection with an $8 million claim that it has against Acis; is that right?

A That's correct.

Q And is that the claim -- is that the subject of a formal proof of claim?

A Yes.

Q Okay.

A It is a claim filed in the Acis case.

Q I've placed before you an exhibit binder, and I would ask you to turn first to Exhibit 4.

A Okay.

that benefits everybody.

So I guess, Your Honor, I mean, I don't know what else to say about the benefits of the Neutra appeal except that the testimony, I think, speaks for itself. But, you know, I -- and in terms of --

THE COURT: Again, fight the claim of a creditor. Foley can represent Highland in the adversary proceeding, wherever that goes forward.

MR. DEMO: Yeah.

THE COURT: Probably District Court, not this Court. At least some of it, if not all of it. But anyway, I'm digressing. They can object to Acis's proof of claim. They can object to Terry's proof of claim. I mean, --

MR. DEMO: And conversely, Your Honor, if -- if --

THE COURT: -- this has nothing to do with -- I mean, I don't get the appeal. I mean, I --

MR. DEMO: Right.

THE COURT: Neutra can appeal, HCLOF can appeal, but I'm not seeing the benefit to Highland.

MR. DEMO: And I guess the only thing I would say, Your Honor, is if there is an improper benefit, we are not saying that the fee applications are sacrosanct. People can challenge the improper benefit there.

And again, the settlement gave broad discretion to the Committee to pursue insider claims. So if an insider is

receiving a benefit from this, the Committee has standing to pursue that.

So it's not a null set, Your Honor, whereas cutting off the appeal now does take away that possibility.

THE COURT: How would I be cutting off the appeal? I'm not cutting off the appeal. King & Spalding can go in there and fight hard. Foley can go in there and fight hard for Neutra. So, --

MR. DEMO: One second, Your Honor.

(Counsel confer.)

MR. DEMO: And I guess, you know, Your Honor, and I do want to reiterate that there is no other party with an economic incentive to fight the Neutra appeal the way that the Debtor has an economic incentive.

THE COURT: That makes no sense to me. HCLOF is the one who hated this injunction.

MR. DEMO: That's not the Neutra appeal, Your Honor. That's the confirmation order.

THE COURT: Well, okay. Neutra gets its company back if they win.

MR. DEMO: And we would get our contracts back.

THE COURT: And arguably, it can control Acis, maybe, okay, and it can assign management contracts to whoever it wants. That just -- and it says it'll assign them to Highland. If you can trust Jim Dondero, then Highland's going

to benefit if Neutra wins that appeal. Right?

MR. DEMO: Yes. Yes, Your Honor.

THE COURT: Okay. So that --

MR. DEMO: Highland would benefit greatly --

THE COURT: Okay.

MR. DEMO: -- if Neutra were to win that appeal.

THE COURT: Okay. Okay. Well, but first Neutra benefits, right? And then --

MR. DEMO: No.

THE COURT: -- Highland only secondarily benefits --

MR. DEMO: I -- I --

THE COURT: -- if Jim Dondero keeps his word and gives the management contracts back to Highland.

MR. DEMO: Jim Dondero would also have to repay the $8 million in claim, even if he didn't reinstate those contracts. And that $8 million would be hundred-cent dollars.

THE COURT: Okay.

MR. DEMO: So, worst case, --

THE COURT: It would have been nice to have him testify as to all of this.

MR. DEMO: Worst --

THE COURT: It would be more compelling if I had him.

MR. DEMO: Well, --

THE COURT: Okay? But I don't think --

MR. DEMO: -- I can only do so much, Your Honor.

THE COURT: -- that's going to happen anytime soon.

MR. DEMO: But I guess worst-case scenario is that it's $8 million in hundred-cent dollars.

THE COURT: Okay.

MR. DEMO: And that's not nothing for $500,000. And only a portion of that $500,000.

THE COURT: Okay.

MR. DEMO: Thank you, Your Honor.

THE COURT: Okay. Mr. Lamberson?

MR. LAMBERSON: Your Honor, do you want a closing from me? Or no?

THE COURT: I don't really need it. Thank you.

MR. LAMBERSON: Okay.

THE COURT: Okay.

MR. LAMBERSON: Because I know your hearing starts in about two minutes.

THE COURT: All right. So, I just hate it that we spent so much time on this. I hate it that we spent so much time, but, I mean, I understand. I understand. You know, I think the employment application was filed pretty early in the case, right, and -- October 29th. And it was continued, continued, continued, because we were getting objections from the Committee, or they wanted time to look at it, I guess. And now you're kind of up against the wire, right, because oral arguments are set at the Fifth Circuit next month. So I,

you know, I hate it that we were here, but I understand it.

But I'm concerned. I'm concerned -- well, here's the deal. We have a great board, and I totally get that Bankruptcy Courts should defer heavily to the reasonable exercise of business judgment by a board. And we've got great professionals. And we've got this case, I think, on a good track as a general matter now. But I'm concerned that Dondero or certain in-house counsel has -- you know, they're smart, they're persuasive -- that -- what are the words I want to look for -- they have exercised their powers of persuasion or whatever to make the Board and the professionals think that there is some valid prospect of benefit to Highland with these appeals, when it's really all about Neutra, HCLOF, and Mr. Dondero. That's what I believe.

I mean, this is awkward, right, because you want to defer to the debtor-in-possession, but I have this long history, and I can think through the scenarios. If this is reversed, here is how it will play out. If this is reversed, here is how it might play out. And I know, you know, there are multiple ways it might play out, but I cannot believe there is a chance in the world there is economic benefit to Highland if these things get reversed. Economic benefit to Neutra: Yeah, maybe. Economic benefit to HCLOF: Well, they'll get what they want. You know, whether it's an economic benefit, I don't know. But benefit to Highland? I just don't think the

evidence has been there to convince me it's reasonable business judgment for Highland to pay the legal fees associated with the appeal.

And even more concerning to me is a valid point was made that Highland is in bankruptcy because of litigation, litigation, litigation. The past officers and directors and controls' propensity to fight about everything. This isn't a balance sheet restructuring, okay? It's not a Chapter 11 caused by operational problems or revenue disruption or who knows what kind of disruption. It's about years of litigation finally coming home to roost. And this just appears to be more of the same, potentially.

Okay. Parties have a right to appeal. I respect that. Neutra, go for it. HCLOF, go for it. But this estate and its creditors should not bear the burden of having Highland pay for that, when, again, I don't think there's any evidence to suggest they could benefit at the end of the day.

So what I'm going to do is I'm going to approve the retention of Foley to represent Highland in the Acis case. We all know the adversary is stayed right now. It may or may not ever be un-stayed, depending on what strategies people want to pursue. But Highland, I think a meritorious case has been presented, and under 327(e) I will approve Foley representing Highland in all Acis matters. Okay? The Acis bankruptcy case. The adversary proceeding, if it goes forward. And so

that's my ruling.

I will additionally rule, for the avoidance of doubt, that if Foley wants to represent Neutra in the appeals and get paid by Neutra, I don't have any problem with that. In other words, I'm not going to find something like there's a conflict with the estate, you know, because of its simultaneous representation of Neutra. That's fine. But I'm not going to approve Highland paying anything in connection with either of those appeals. So that is the ruling of the Court.

Have I left any gaps here?

MR. DEMO: Your Honor, just one clarification.

THE COURT: Uh-huh.

MR. DEMO: Foley is representing Highland Capital Management in the appeal of the confirmation order to the Fifth Circuit. I just want to clarify that your ruling that Highland can represent -- I'm sorry -- Foley can represent Highland in all Acis matters extends to their representation of Highland Capital Management in the appeal of the confirmation order that's set for March 30th.

THE COURT: Okay. Let me think through that.

MR. DEMO: And again, Your Honor, there's been no objection to that.

THE COURT: King & Spalding is in there representing HCLOF. Foley would be representing both Neutra and Highland in connection with the confirmation order?

THE COURT: Okay. Thank you all.

(Proceedings concluded at 1:44 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **02/20/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas June 30, 2020 9:30 a.m. Docket
Debtor.	MOTION FOR REMITTANCE OF FUNDS HELD IN REGISTRY OF COURT FILED BY CLO HOLDCO, LTD. (590)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Debtor:	John A. Morris Greg Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For CLO Holdco, Ltd., Movant:	John J. Kane Brian W. Clark KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539

the argument that you can't look at the Bankruptcy Code to determine whether the money should come out of the registry or not, and then be back in front of you, you know, three or four weeks later to relitigate any of those issues.

So that was absolutely my recollection and understanding, Your Honor, and I think from your comments I intuit that it was your understanding as well, that this was not something that we were going to deal with again very quickly, but was something to preserve the status quo, a reasonable solution, an equitable solution under Section 105. And I believe that's what Your Honor ordered.

THE COURT: All right. Well, I'll let you go ahead and make your opening statement. I think Mr. Kane was finished before I started asking my questions.

MR. CLEMENTE: Okay.

THE COURT: Mr. Clemente, you may proceed.

MR. CLEMENTE: Thank you, Your Honor. I appreciate that. So, and I'll try and be brief on the opening.

OPENING STATEMENT ON BEHALF OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

MR. CLEMENTE: Your Honor, like it or not, CLO Holdco is not an independent, unrelated, third-party investor merely seeking distributions on account of its own arm's-length independent investments. Instead, CLO is a related party in literally every sense of the word. That's not in dispute.

That is part of the Jim Dondero or Mr. Dondero web of entities.

CLO Holdco is effectively controlled by Mr. Dondero. It was seeded and received assets transferred from the Debtor, including the assets giving rise to the distribution that's in the registry. None of that is in dispute. All of this at a time when Mr. Dondero controlled the Debtor as well as the parties through the various intermediate transactions that ultimately resulted in the assets arriving in CLO Holdco. That is not in dispute.

Mr. Dondero's past fraudulent conduct, including fraudulent transfers, is also not in dispute. He was on all sides of this transaction. And therefore this transaction, along with many of the others, must be viewed with skepticism and scrutinized very closely by the Committee and by this Court.

The Committee has only just begun such work, Your Honor. And given the Byzantine empire created by Mr. Dondero, it will take time and significant resources to fully and properly conduct an investigation.

And Mr. Kane referred to, did we do discovery? We did not. Our reaction to this motion was the same as Your Honor. And as you can see by the stipulations that we have agreed to for purposes of this hearing, we didn't want this to be a situation where the estate would spend a tremendous amount of

resources to deal with something that we thought that was dealt with on March 4th.

But aside from that, given the web that's been created here, we can't just isolate one piece of it. We can't just be like, I'm going to look at the CLO Holdco documents and be able to develop a full theory. This is a tapestry of interrelated entities that is opaque and vague and purposely so. So you can't just focus on one piece and then try and say, well, I know what this piece is, because that piece has many interrelated complex ramifications and relationships where, frankly, you can't just say, okay, let's focus on this one issue, because you're going to miss the entire tapestry.

We still need to examine, as I mentioned, the whole thing, and this takes time and it takes an investment. So while I understand CLO Holdco wants to receive its distribution, I also understand that my constituency wants to be paid, some of whom have been waiting for over a decade.

To be clear, Your Honor, my constituency didn't choose to be here in the bankruptcy. But CLO Holdco chose to associate itself with Mr. Dondero and to take assets from Highland in convoluted related-party transactions and reap the benefits of those transactions. CLO Holdco can't now step away from that and try and suggest to Your Honor that this is about taking time under 28 U.S.C. 2042. That was never what it was about on March 4th, and it's not what it's about today.

Holdco has or doesn't have, we have no idea. And it's controlled, ultimately, let us not lose sight of the fact, by Mr. Dondero.

So, allowing CLO Holdco to take distributions will place them with an offshore entity, potentially outside the jurisdiction of this Court, or at the very least, placed in five or six entities removed or who knows where, including potentially other foreign entities.

Therefore, exercising authority under Section 105 is consistent with preserving, protecting, and maximizing the value of the Debtor's estate, which estate includes claims, causes of action, and avoidance actions.

As you know, 105 is the means and -- circumstances (audio gap) preserve and protect the estate.

And to be sure, this is not inconsistent with any other provision of the Bankruptcy Code, and it's, in fact, from our perspective, in furtherance of the goals of the Code.

Your Honor, regarding the payments that Mr. Kane (audio gap), the fact that a few payments were made on the note doesn't change the fact that Section 105 applies and the Court should deny the motion.

As with all that is Highland, nothing is simple or easy. First, CLO Holdco received millions more in assets and transfers, aside from the interests giving rise to the distributions at issue. So the fact that there were payments

on the notes really speak nothing to the fact of whether the overall transaction was for reasonably equivalent value or otherwise problematic, especially when there is nothing in the record regarding the Dugaboy Trust, its wherewithal to pay, or the fairness of the terms of the note, or any of that. Or why the note was structured this way or, you know, what the Get Good Trust and the Dugaboy Trust do, how they interact, who makes decision on what gets paid and doesn't get paid.

The few payments, while interesting, Your Honor, again, do not establish reasonably equivalent value or the propriety, in our view, of the transfers.

Finally, as this Court knows, reasonably equivalent value is not determinative of whether the transfer was intentionally fraudulent or otherwise potentially avoidable or problematic. So, while deeds are interesting, Your Honor, I would submit that they don't move the needle in changing the fact that the motion should be denied.

Now, Your Honor, to the point that you raised with me before I started my remarks here. Much has been made about inappropriate prejudgment remedy or attachment or similar arguments. I submit this case is moot, Your Honor. Again, at the risk of repeating myself, I will emphasize that CLO Holdco is not an independent third party. Like it or not, it is tied up in a ruinous web with Mr. Dondero, and that in and of itself makes this case unique and distinguishes it from the

other cases cited by CLO Holdco.

Additionally, Your Honor, the current circumstances are distinguishable because the Debtor had control over these funds. That's why we were in front of you on March 4th. I agree, and I'm not arguing, that the Debtor did not own these funds. But it clearly had control over them at the time that it sought to make the distributions on March 4th. So, in my humble opinion, Your Honor, that means the Court had control over that.

Having them held in a registry while an investigation occurs is not akin to slapping a lien on someone's house or taking possession of an automobile, like the cases cited by Mr. Kane where they require there's some -- an adversary proceeding or some type of complaint.

The situation here, again, Your Honor, matters. The Debtor was before you seeking your authority to make this distribution. That is entirely different than if I were to walk in here and say my colleague, Mr. Twomey, I think that, you know what, I don't like him and so I have a claim against him, and I want Your Honor to enjoin him from being able to sell his automobile. That is entirely different, and in my view completely distinguishes it from any of the cases that Mr. Kane cited, including, of course, I have much respect for Judge Houser, but including the case authored by Judge Houser.

So, Your Honor, again, having them held in the registry is

attachment. Bankruptcy Rules aren't structured like that.

But importantly, Mr. Clemente presented no facts to support his balancing of harms argument and presented no facts to establish that he has any viable claims against CLO Holdco. Arguments that James Dondero participated in frauds does not mean that there's a claim or cause of action that the Committee can assert against CLO Holdco, which is what would be required to obtain an injunction.

This is a big if. If the Committee is seeking to obtain an injunction, it must satisfy its burden of proving under 7065 and the four-factor test established by *Janvey v. Alguire* in the Fifth Circuit in 2011 and the many cases before that. And it just can't do it.

So I want to leave the Court with one case citation, because if the Court is considering some means of entering a preliminary injunction outside of an adversary proceeding, I was able to find a grand total of one case that address that in the Fifth Circuit. And that is the 1995 decision of *In re Zale* in which the Fifth Circuit noted that the only way a 105(a) preliminary injunction could be issued, after a finding of these unusual circumstances and the like, was if all of the protections of an adversary proceeding had been afforded to the non-movant and if the party that was requesting the injunction satisfied the four-factor test that's found in 7065.

There are no extraordinary circumstances or unusual circumstances here. And if this Court believes that the context of this case warrants that, then the Committee would still have to satisfy that four-factor test for a preliminary injunction. And it has the burden of proof on those four factors. It hasn't presented any evidence whatsoever to support that it can meet the first, let alone the second, third, and fourth factors of that test.

So, Your Honor, with that, I'll close our case, unless you have additional questions, and request that the Court grant CLO Holdco's motion.

THE COURT: A couple of follow-up questions. I have certain facts in my brain, and I can't remember if they're in evidence or stipulated to or I read them in a pleading. So, I just want to ask: Somewhere I remember seeing that CLO Holdco, or, you know, maybe it's its parent, I think -- Mr. Clemente said we have a Byzantine structure here and we have a sub-web within a bigger web with regard to CLO Holdco. But, anyway, CLO Holdco or its parent has assets of approximately $225 million? Is that evidence or undisputed?

MR. KANE: Your Honor, that was contained in one of the pleadings asserted, I believe, by the Committee, and that was the Charitable DAF entities, not necessarily CLO Holdco. There hasn't been any evidence presented by the Committee of the assets held by CLO Holdco other than what we have before

the Court.

THE COURT: Okay. So it's not something you would stipulate or offer one way or another?

MR. KANE: No, Your Honor, I think that's factually incorrect and I don't stipulate to that.

THE COURT: Okay. I think my notes show that that was the alleged amount of assets as of September 30, 2019. But, again, that may have just been a pleading, not anything in evidence.

All right. And are Mr. Scott or Mr. Dondero on the phone today or on the video? I'm just curious.

MR. KANE: Your Honor, I lost you on the video a little bit, but assuming you can hear me, though, Mr. Scott is not. We had conversations with the Committee about various exhibits and whether or not Mr. Scott would be here to testify to prove up exhibits. Once the exhibits were all stipulated as admissible, then there was no need for Mr. Scott to participate.

THE COURT: Okay. I was not going to ask him anything. I just was curious if he was listening in. Or Mr. Dondero, for that matter. I guess Mr. Dondero is not on the line, correct? (Pause.) All right. I'll --

MR. KANE: Your Honor, I -- I think -- I'm sorry. I've had no conversations with Mr. Dondero. I have no idea whether he's on the line.

THE COURT: Okay. I'll take silence to mean he's probably not, but --

All right. I asked that question for, I guess, a couple of reasons. But the main reason I asked is -- and I'm going to say this as kindly as I can. They're not here to hear it anyway. But I feel like perhaps they are a little tone deaf, for lack of a better term, on how this all looks to the Court today. And what I mean by that is, obviously, I assume it was their decision to bring this motion, at least Mr. Scott's, and likely Mr. Dondero as well had some involvement in that decision. And the reason I say that it feels like they're a little tone deaf about how this looks is that we just had an extensive hearing and some very thorough pleadings, a lot of evidence uploaded, on a $2.5 million issue. And I don't -- you know, I appreciate that that is a significant sum of money, but we've used the word context a lot this morning: In the context of this reorganization, it seems like a very big deal was raised here, at the choice of Mr. Scott and Mr. Dondero, over a $2.5 million issue, in the context of a reorganization that involves at least hundreds of millions of dollars of debt, if not over a billion. UBS says they're owed a billion.

And I just asked my question a minute ago about the value of assets that the DAF or CLO Holdco or that sub-structure has managed, because while no one will commit, is it $225 million

or not, you know, I take it that the Committee had a good faith basis for saying that, and if it's not that, it's probably a quite sizable number.

Again, so I'm kind of thinking out loud about the proportionality of this issue. $2.5 million, not anything to sneeze at, but we're talking about a Charitable DAF that probably has many, many, many more times that of assets. And so there was certainly no equitable argument of hardship or, you know, significant detriment that's befalling CLO Holdco by the tying up of this money in the registry of the Court for this relatively short time period. So, again, it feels a little tone deaf to be bringing this argument, occupying so much time from the parties, the lawyers, the Court, over this issue.

And just to further elaborate on that, it matters to me, and I say this about the tone-deafness, partly because I thought -- I said this at the beginning of the hearing, and I still say it -- we already put this issue to rest, albeit temporarily, in March. And in April, we get this new motion. Again, I recognize the language of the March order reserved everyone's rights to come back and argue about this, but, again, the buzzwords for this hearing are going to be context matters, I guess. Mr. Clemente, you get credit for that buzz phrase, those buzzwords.

Again, I issued the order with regard to putting these

monies in the registry of the Court at the suggestion of Mr. Dondero's very wonderful lawyer, retired Judge Lynn. And, again, the context was we had a protocol order early in this case that the Committee negotiated heavily with regard to monies being disbursed out under the control of the Debtor, and heavily negotiated. I remember the CLO Issuers, I think, had some pause and concerns and got their language into that order.

So we had this protocol order. Debtor was worried about violating the protocol order, so Debtor files the motion February 24th, wanting the blessing of a court order before it transferred these monies to CLO Holdco and some other Highland-affiliated entities. There were vehement objections, and the Court issued the order saying, Let's put these monies into the registry of the Court, at the suggestion of very able counsel as to how we could resolve that contested matter we were there on on March 4th.

So, you know, a month later, April, we have this new motion of CLO Holdco reviving the dispute, the $2.5 million dispute that we had just put to rest temporarily in March at the suggestion of lawyers. I didn't issue a 105 injunction outside the context of an adversary proceeding just on my own, *sua sponte*. It was suggested to me that this was a good solution. People embraced it. That's what we did. And I sure didn't have in my brain that a month later we'd have a

brand new motion regarding whether these monies should be disbursed to CLO Holdco all over again, when that was the issue that was already before the Court in March.

I, again, fully recognize that everybody reserved their rights, but I focus on this context because, again, I wish Mr. Dondero and Mr. Scott were on the call to hear this: This almost feels like a good faith issue to me. You know, maybe I would feel slightly different if there had been a broad emphasis, heavy emphasis, CLO Holdco standing up through a lawyer that day saying, We're just letting you know, we're going to get together a motion in very short order and tee this up again. Because I would have probably said no. You know, if -- let's just hear it right now today, if this is only a three-week mandate or whatever. So, good faith is something that I can't help but scratch my head and be troubled by.

So, I want to emphasize that CLO Holdco's lawyer has made perfect arguments regarding the potential legal issues here. There are some valid arguments here about is this tantamount, holding the money in the registry of the Court that a non-debtor asserts is its property, is that tantamount to a prejudgment remedy? You know, did it require an adversary proceeding? Did it require the traditional four-prong prove-up for a preliminary injunction? And did the Court just give short shrift to those legal technicalities?

Again, these are compelling arguments, but I'm overruling the arguments because, again, I believe it ignores the context that CLO Holdco essentially consented, acquiesced, in this placeholder keep-the-status-quo solution. And I question its good faith in, so quickly after consenting, bringing this motion.

But moreover, I do find that in the unique context of the disputes before the Court on March 4th, I did have authority to issue a 105 injunction. 105, as we all know, at Subsection (a) gives a bankruptcy court authority to issue orders necessary or appropriate to carry out provisions of Title 11, and the last sentence even provides a mechanism for the Court to *sua sponte* take action to, among other things, prevent an abuse of process or just do what's necessary or appropriate to implement court orders or rules.

So I think, again, in the context before the Court, it was not only a consensual thing, but the Court had authority. And the backdrop of this, again, cannot be overstated. Again, to use Mr. Clemente's word, we have this Byzantine structure here. It's a lot for the Committee to get its arms around. And even the CLO Holdco structure -- again, I'm looking at my notes, my fancy chart -- we have CLO Holdco, a Cayman Island entity. Its parent is Charitable DAF Fund, LP, another Cayman Island entity. It, in turn, is owned by Charitable DAF Holdco, Ltd., yet another Cayman Island entity. Its general

partner happens to be a Delaware entity, Charitable DAF GP, LLC, but the beneficial owners of it are the three Highland Foundations, of which Dondero is president and director, and Mr. Scott the treasurer and director.

So, I'm not saying the Byzantine structure is in and of itself problematic, although one might wonder why a charitable organization needs to have three offshore entities as part of its structure. I digress. But we all know a Byzantine structure and ties to Dondero do not mean something is attackable in and of itself, but we have had issues raised about the Dynamic Fund and the various transfers with regard to Dugaboy, the Dondero Family Trust, and Get Good Trust and the note. All of that is worthy of examination, and the Committee has not had all that long in this case to investigate it.

So, I'm going to say a couple of more things. First, the motion is denied, but I'm going to put more strings on it than that. I'm denying the motion, but as part of this ruling I'm going to order that the Committee has 90 days, unless the Court happens to extend that on motion or agreement of the parties, to file an adversary proceeding against CLO Holdco or the money shall be released. Okay?

So, again, I intended it, as I think everybody did, to be a placeholder, to keep the status quo little bit. Again, Mr. Kane has raised good arguments that maybe an adversary

conceivably was necessary or might become necessary. So here we have a requirement of an adversary within 90 days or the money shall be released to Holdco -- again, unless someone moves to extend that or I get an agreement to extend that and I happen to decide to issue an order extending that.

I presume that if an adversary is filed, then if the Committee wants that money to continue to be held in the registry of the Court, then they would have to file an application for injunctive relief, essentially, to keep the money in the registry of the Court pending the resolution of the adversary proceeding.

So that is the ruling of the Court. Mr. Clemente, I'll ask you to draft up the order. And I reserve the right to supplement this oral ruling in that form of order. And please run it by Mr. Kane before electronically submitting it to the Court.

Now, I'm going to say a couple of other things, and then I'll, before closing, I'll ask if there are questions or other announcements. I have told the parties and the lawyers to focus on a plan and problem-solving how we're going to pay creditors. And I think I expressed my strong hope that people would stop litigating everything. I think I'm remembering saying this most recently at the UBS hearing a few weeks ago on a motion to lift stay. Once again, we had a very lengthy hearing that day. I denied the motion. And here we are

as I can to distance CLO Holdco from that taint, because understanding that it's in what has been alleged as a Byzantine web, we think it's important to separate CLO Holdco and its operations to ensure that things are done in an appropriate fashion with square corners.

That's all I have, Your Honor. We have no objection to the additional funds being pled into the registry of the Court. We can agree those funds would be adjudicated as part of this dispute. We understand that we did not prevail, and we appreciate your Court hearing our argument.

(Proceedings concluded at 12:06 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **07/02/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT E

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas July 8, 2020
Debtor.	)	1:30 p.m. Docket
	)	- MOTION TO EXTEND EXCLUSIVITY PERIOD (737)
	)	- MOTION TO EXTEND TIME TO REMOVE ACTIONS (747)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For the Debtor:	Zachery Z. Annable Melissa S. Hayward HAYWARD & ASSOCIATES, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104
For Acis Capital Management GP, LLC:	Rakhee V. Patel Annmarie Antoinette Chiarello WINSTEAD, P.C. 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 (214) 745-5250

been working very cooperatively with our creditors over the last few months and we're just seeking to do it the best way.

So nothing I've said today, nothing, you know, should come as and will come as a surprise to the Committee, but we're working better, recognizing that ultimately the creditors want to be paid, and doing that in an appropriate manner and a thoughtful manner is what the Debtor is committed to do with its partner, the Committee, in this process.

THE COURT: Okay. Sort of jumping back, I forgot to ask earlier when we were talking about Acis: Has the Fifth Circuit rescheduled oral argument on the appeal of the Acis confirmation order and order for relief?

MR. POMERANTZ: I believe -- Your Honor, maybe Ms. Patel would know off the top of her head.

THE COURT: Ms. Patel?

MS. PATEL: Your Honor, it was -- it was briefly -- I -- and I say briefly, it was briefly we had -- we got a notice at some point, I believe in early June, that the Fifth Circuit had reset oral argument. And then approximately, I can't remember exactly, but it was like, I don't know, a week or maybe ten days later, we got a notice that it was cancelled again. We have not received notice that it is rescheduled, so it is still pending. But it has not been taken off oral -- it has not been taken off oral argument at some juncture.

THE COURT: Okay. Well, I acknowledge that that is a

pandemic disruption for sure. It would have been nice to have that resolved one way or another by now.

MS. PATEL: Agreed, Your Honor. We were trying to figure out, frankly, in the week to ten days that it took from the scheduling to how it was cancelled, exactly how our team was going to get down to New Orleans. And the -- I think the leading contender was to rent an RV and drive down so we could safely get there. So it certainly has been a casualty of the pandemic.

THE COURT: Okay. All right. Two more questions. And this one has been a bit of a tough one for me to decide whether I should broach this topic or not. You know, I read the newspapers, the financial papers, just like everyone else, and I saw a headline that I wished almost I wouldn't have seen, and it was a headline about Dondero or Highland affiliates getting three PPP loans. And, you know, I'm only supposed to consider evidence I hear in the courtroom, right, or things I hear in the courtroom, but I've got this extrajudicial knowledge right now thanks to just keeping up on current events. I decided I needed to ask about this.

What can you tell me about this, Mr. Pomerantz? I mean, I assumed, from less-than-clear reporting, that it wasn't Highland Capital Management, LP, but I'd like to hear anything you can report about this.

MR. POMERANTZ: So, look, Your Honor, the first I

could say is that, to my knowledge, Highland Capital, the Debtor, has not obtained a PPP loan. I know there have been discussions with certain funds that basically have certain assets, private operating companies, about obtaining PPP loans. I don't have the specifics for Your Honor. I'm happy to provide that.

Of course, to the extent Mr. Dondero, on any of his affiliated funds that are under the control of the Debtor, I would have no way of answering that, but I'm happy to follow up with that with the Board and report back to Your Honor in whatever appropriate manner you felt to obtain that information.

THE COURT: Okay. Well, let's have a report on that on the 14th when we come in. You know, maybe Mr. Seery or Mr. Sharp or some other person. But you can probably imagine the different things going through my brain. You know, well, first, let's see if it was -- you know, I don't -- again, I'm not expecting it to be Highland Capital Management, LP. I would be beyond shocked if, you know, that somehow happened when they're in bankruptcy. And, you know, I think it would require a 364 motion, just like any other borrowing, although I know it's kind of a forgivable loan. Strange bird.

But then if it's some affiliate of Highland, I still feel like we need some transparency and disclosure on that. I mean, I -- and who were the human beings behind it. It just

busiest judges in the country right now. I'm wondering when were they contacted. Was it really recently, or a week or two ago? Because they've probably gotten ten new mega-cases in the past two weeks.

MR. POMERANTZ: So, Your Honor, the last -- the last two weeks, again, probably since June 15th, we had been discussing the structure of a mediation. We, the Debtor, proposed perhaps a combination of Judge Isgur and Jones. We initially had that conversation with Mr. Clemente, and then we socialized it with the rest of the Committee members. As of last Thursday, I believe it was, we had consensus that Judge Jones, and if available, also Judge Isgur, would make sense.

I sent an email to Judge Jones' clerk, indicating that we had a hearing today, that it would be helpful if we got a response, and this morning, two hours before the hearing, Judge Jones' clerk responded and told Mr. Clemente and I that he is available and ready and suggested that we have a conference with -- again, I'm not sure if it'll be him or his clerk, to talk about availability. Of course, we didn't want to go ahead and have that discussion until, you know, we got Your Honor's input on it.

THE COURT: Okay. I mean, a couple of things come to mind. One is I am just flabbergasted that they would have any availability. I know they're -- I'm aware of Judge Jones doing hearings on weekends.

But second, I'm also concerned what is their idea of availability. Because in order for a mediator to meaningfully help you on this, I mean, it's going to take not just hours but days of time, unless you want the mediator to just have a 30,000-foot view. And I mean, I just cannot imagine, --

MR. POMERANTZ: So, --

THE COURT: -- once again, that they would have days and days to come up to speed with, you know, 11 years of litigation or however long it was, not that long, with UBS, you know the years with Acis, you know, the various alleged claims and causes of action, and, you know, the Byzantine structure here. I mean, you know, not that they have to be, you know, as educated as a judge presiding over litigated matters, but I just cannot imagine they could meaningfully spend time on this.

So what are you all envisioning? Because I know what I'm envisioning, and maybe we're not seeing it the same way. I mean, what are you thinking? That you'll go in and spend a day with, you know, maybe just each of you doing a 25-page white paper, and you'll either settle it by the end of the day or not, or what?

MR. POMERANTZ: So, let me start by saying that when everyone raised the issue of Judge Jones and Isgur, everyone had the same potential concern that Your Honor has mentioned. You know, my firm and me personally, I'm involved in a couple

of cases before Judge Jones now, significant cases. So there was a concern.

I think people also generally thought that if they accepted and they knew what they were getting into, they would want to do a good job and they'd have the time.

We have not had the ability to have an extensive discussion. That discussion could either occur with Mr. Clemente and myself speaking to the clerk or the judge, or if Your Honor -- nothing stops Your Honor from picking up the phone, speaking to Judge Jones and asking him as well.

But I expect it to be a very intensive mediation process. I do understand that Judge Jones only does mediations in person, so this would require people getting to Houston, which, in my experience, while I have participated in mediations virtually on the phone, it's a lot more effective to be in person. We would anticipate detailed mediation briefs. We would envision each of the parties speaking to Judge Jones to give him their perspective. But it would be -- it would be a significant assignment.

Again, whether we would conclude at the end of August, I don't know, but I would contemplate a good two, three days of in-person mediation at the end of August, and then probably, if necessary, to set up for something else, which, again, there are several different things. And I mentioned in my opening remarks why I think people like Judge Jones -- and

nothing else, we'll go ahead and adjourn for today. And I'll keep -- if there's anything worthwhile to report on the mediation front before we have our hearing on the 14th, I'll have my courtroom deputy reach out to all counsel by email and let you know. Okay? All right.

MR. POMERANTZ: Thank you very much, Your Honor.

MS. PATEL: Thank you, Your Honor.

THE COURT: Thank you. We stand adjourned.

THE CLERK: All rise.

(Proceedings concluded at 3:00 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **07/09/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj11**
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas July 14, 2020 1:30 p.m. Docket
Debtor.	APPLICATIONS TO EMPLOY JAMES P. SEERY AND DEVELOPMENT SPECIALISTS, INC. (774, 775)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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file Multi-Strat as a bankruptcy, it was hard to get folks to really come to the table and think about how to settle that issue.

These issues in regard to the total case are much more complicated. We're going to file a plan. We believe that will set a bit of a crucible to folks to think about how to move forward with their claims. We are, as Jeff Pomerantz mentioned last time, agreed in principle, but we have some issues to work through with Redeemer that we hope to be able to resolve by this week. And so that's my internal goal, but I expect to be able to do it.

The reason that's complex is not that it's simply a -- the arbitration award is not simply a money award; it actually requires certain offsets, it requires certain assets be sold and paid for. And we're trying to carve our way around some of those, because they (inaudible) agreement, because they're -- they're more difficult than simply exchanging cash for assets, because we don't have the ability to do that right now. We don't have the cash, and we're in bankruptcy.

So I do believe that we can get these done. And then if mediation is something that would work, great. We're going to try to do it without mediation as well. Going to try to do it before we get to mediation and resolve claims. And if we're unable to do that, hopefully mediation will push it forward or we have to have a fallback, which will be dispositive motions

with respect to certain of the claims.

But we expect to have and I think we have a number of claims objections that have (inaudible). We've resolved those. We're really down to three claims. And one of them is almost done.

Q All right. At the last hearing, --

MR. MORRIS: Your Honor, that really does finish the substance of the testimony with respect to this motion, but at the last hearing Your Honor raised some questions about PPP loans.

THE COURT: Yes.

MR. MORRIS: Would you like me to just take a moment with Mr. Seery to address that?

THE COURT: Yes, please.

MR. MORRIS: Okay.

BY MR. MORRIS:

Q Mr. Seery, you're aware that the Judge raised some questions about whether and to what extent the Debtor may have been involved in any of the PPP loans?

A Yes.

Q And have you done any work to try to figure out the answers to the questions the Judge posed?

A Well, work in response to the question, but also work previously. So, just a -- quickly, as I think we all know, the PPP program was put forth to try to give companies cash

that they had to use for employee payments, to continue to keep payroll supported and to continue to have folks hold their jobs.

We have -- and I think the *Business Insider* article, which I'm not familiar, I know the publication is not something I seen much, but I'm not familiar with the specifics of that article, and -- but any PPP, away from the assets that HCMLP actually owns or controls. And we've got -- we've got three -- and I think there's some substance to the article. But we've got three businesses. And these are -- this is public, but I'll go into the -- sort of the obvious reasons without going into the specifics of the business around the ones that I know of well.

Carey Limousine is a business that transports folks in high-quality cars from airports or from events or between businesses. It was hit severely by the COVID-19 pandemic., particularly with respect to the air transportation, which was really one of its biggest areas. The business, notwithstanding Uber and the other type of shared ride services, had actually done quite well, and Highland was an owner of a significant portion of that business related to some loans that it held in various funds.

That business's management, with its own outside counsel, sought a PPP loan. Then our director came to us and discussed with the Board the propriety of that loan. We engaged outside

counsel, not bankruptcy counsel but counsel that had particularized expertise in PPP, and spent a ton of time really understanding both the law as well as the specific regs. Carey did get a PPP loan. It is potentially forgivable, depending on how it's used.

The second entity that was similar but didn't come to the Board, we have a business called SSP, which is an excellent highway business that provides equip -- materials for a lot of different road construction, but primarily highway road construction. Very well run business. That entity got a PPP loan as well, primarily worried about whether the construction on the highways would shut down.

So it's been -- I don't believe that's really happened in Texas, which is where most of their business is, but they qualified for that loan. They did not come to the Board. A very specific carve-out, because one of the interest holders that we share that position with is a Small Business Administration fund and, so it was very clear that it was entitled to that loan.

Then there's a third entity called Roma that got a very small PPP loan. We don't control the entity and we were not involved in its acquisition of that loan. Again, it would have to be used as required.

One of the things I want to make sure that is in the record and for Your Honor with respect to Carey, we spent a

lot of time as a Board focused on, one, whether it was legal to get that loan, first. We're doing everything right, by the book. We're not going to play in the gray. There is no gray. There's black and white in these areas.

Number two, was it ethical, was it appropriate that we went and got this loan or that Carey went and got this loan? Management, with the outside counsel, was sure that we could do it, but we didn't want to take their word for it, so we went out and got our own counsel, third-party counsel for the Board to make sure that this was appropriate.

Three, the requirements around these loans are significant and the penalties for violating them are severe. So if you get a loan by mistake, are you really required to pay it back? And if you're mistaken, that will be expensive, but it won't be a real penalty. But if you get a loan that's really inappropriate, that you shouldn't have gotten, that was a material misstatement of any of the facts around it, the penalties are significant. And not only in terms of the opprobrium that you'd suffer in the press, because that's coming, but in terms of how you use the funds.

So they can only be used in very specific ways, and we were exceptionally careful around this program.

The basis of the program is to keep people employed. And with a business like Carey Limousine in particular, where there's a significant amount of debt, where the business is

shut down by COVID, where we didn't have the funds to put into Carey, nor even if we wanted to, we might not have been able to do it without the Committee's approval because of the protocol, a PPP loan was not only legal but it was appropriate. And it's being used in that fashion, meaning to keep employees employed.

Q Thank you very much, Mr. Seery.

MR. MORRIS: Your Honor, I have no further questions of Mr. Seery. Does the Court have any questions?

THE COURT: I actually have a follow-up question regarding the PPP, just to kind of put a bow on this.

EXAMINATION BY THE COURT

THE COURT: I'm looking at the demonstrative aide. I don't know if you, Mr. Seery, have it there handy.

THE WITNESS: I do, Your Honor.

THE COURT: Okay. So I'm turning to Page 6, the chart, the subchart, Investments and Subsidiaries. The third column, Privately-Held Equity, Various Companies. I mean, that would be the type of investment entity we're talking about here that got the PPP loan: Carey Limousine, SSP, Roma? Nothing that was -- well, I'm going to say Highland affiliate. Affiliate, that's a dicey term, but that's the type of entity in the organizational structure we're talking about, correct?

THE WITNESS: Those are the ones -- I want to be very careful, because I know what I know and I know I won't

represent anything that I don't know.

So, with respect to the entities that HCMLP, the Debtor, controls, that's absolutely the case. I don't know, and I can try to find out, but they are not HCMLP-controlled entities. Whether other entities in the related-party complex received loans -- so, obviously, HCMLP did not receive a loan. And the only entities that we were involved with is the ones I mentioned to you.

And I should mention, there are other entities in the privately-held equity that got other government money, in the medical space, that they didn't even ask for. HHS pushed forward payments to folks in the business, medical healthcare-providing businesses, to assure that they had liquidity to provide. And so -- and this has been described to me exactly this way, that they woke up in the morning and found money in their account. And with one of the companies, they actually returned a bunch of the money because it was from a dormant provider number and they didn't believe it was appropriate to keep that money. So that was one of the entities that we control with other investors.

But with respect to our HCMLP entities, these are the only ones I know. With respect to other related entities that might be in the family of businesses, for lack of a better term, that were alluded to in the *Business Insider* article, I don't know that answer. So, I -- if I -- I can try to find

out. I just don't know the answer, Your Honor.

THE COURT: All right. Thank you. Well, this has been extremely helpful.

I should ask does anyone have any questions of Mr. Seery? The Committee counsel, perhaps? Anyone else?

MR. CLUBOK: Your Honor, this is Andrew Clubok. In light of the testimony, I do have some questions on behalf of UBS.

THE COURT: All right. Briefly. Go ahead.

MR. CLUBOK: Okay.

MR. MORRIS: Your Honor? Your Honor, I'm sorry to interrupt, but there's no objection lodged here. If Your Honor wants to permit it, that's obviously the Court's prerogative. But as just a point of order, having not lodged an objection, I don't know what right anybody has to cross-examine the witness.

THE COURT: All right. Well, that's why I said briefly. I think that Mr. Morris makes a good point, Mr. Clubok. You could have filed a written objection, response, comment, or something. So, you're a party in interest. I'll give you a little bit of leeway here. But please keep it brief.

MR. CLUBOK: Yeah. Thank you, Your Honor. It's just some of the things that Mr. Seery said which we didn't expect to hear that has raised a few questions that I just very

briefly will try to address.

CROSS-EXAMINATION

BY MR. CLUBOK:

Q Mr. Seery, good afternoon. I'm Andrew Clubok, Latham & Watkins, on behalf of UBS.

Mr. Seery, you talked about the fiduciary duties you've understood yourself to have with respect to certain parties, and my question to you is: Have you understood, since the beginning of your service as an Independent Director of Strand, that you had fiduciary duties to the unsecured creditors of the Debtor?

A It's a -- it's a -- the answer is I understand the fiduciary duties very well. I think we have fiduciary duties to the estate. So Highland -- what I tried to explain is that Highland, as an asset manager, has very specific fiduciary duties that are set forth in (inaudible) in the cases and the rules that have interpreted it. We, as directors of Strand, have a duty to the estate.

I don't think it's -- I don't think it's fair, and I'd have to subject myself to some education from counsel, I don't think it's fair to say we had a specific fiduciary duty to a particular creditor.

So, for example, if I had a fiduciary duty to UBS, it would be very difficult for me to object to UBS's claim. It would be -- I don't know how I could do that as a fiduciary.

yesterday counsel for Mr. Dondero filed a joinder in the Debtors' objection to Acis's claim. So, again, just thinking about this in the context of mediation, I think, with that joinder, they will be a necessary party. So, going back to Mr. Seery's point, this is not just --

THE COURT: Oh, absolutely. Mr. Dondero is --

MS. PATEL: -- a two-party --

THE COURT: -- going to be a required party in mediation. Absolutely. So, --

MS. PATEL: Thank you, Your Honor.

THE COURT: All right. Well, if there's nothing further, we'll see you on the 21st. And, again, my courtroom deputy may be reaching out before then if we've got things nailed down on mediation.

(Proceedings concluded at 4:54 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **07/16/2020**

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT G

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re:	) Case No. 18-30264-SGJ-11
	) Case No. 18-30265-SGJ-11
	) (Jointly administered under
ACIS CAPITAL MANAGEMENT, L.P.	) Case No. 18-30264-SGJ-11)
and ACIS CAPITAL MANAGEMENT GP,	)
LLC,	) DEBTORS' MOTION to FILE
	) REDACTED QUARTERLY REPORTS
Debtors.	)
	) September 23, 2020
	) Dallas, Texas

Appearances via video and/or telephone:

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For William T. Neary, United States Trustee:	Lisa L. Lambert, Assistant U.S. Trustee Office of the U.S. Trustee, Region 6 1100 Commerce Street, Room 976 Dallas, Texas 75242-1496
Digital Court Reporter:	United States Bankruptcy Court Northern District of Texas Michael F. Edmond, Judicial Support Specialist Earle Cabell Building, U.S. Courthouse 1100 Commerce Street, Room 1254 Dallas, Texas 75242 (214) 753-2062, direct; 753-2072, fax
Certified Electronic Transcriber:	Palmer Reporting Services 1948 Diamond Oak Way Manteca, California 95336-9124

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thing that it might be is commercial information, but I really don't think there's been a showing that it is of the nature that 107(b) is intended to address.

Now don't get me wrong, I am very troubled by some of what I've heard today. I doubt Mr. Dondero is listening in personally, but I'm going to say, and maybe it will get back to him, maybe it won't, but that I'm very troubled by hearing that Dondero-controlled entities, and I believe the DAF, based on what I've heard in the past, is Dondero controlled, I'm very troubled that Dondero-controlled entities are suing Acis and parties that have dealt with Acis, U.S. Bank, Brigade, and the Moody's one is really mind-boggling, but I'm very troubled that this could be hampering Acis' ability to do a reset and it's driving up expenses.

And if these lawsuits were brought before me through a removal or any other mechanism, you know, first, I would have to look at subject matter jurisdiction of the Bankruptcy Court. Yes, we're way past the effective date of Acis' plan, but the Fifth Circuit case authority provides that if there is a dispute postconfirmation that bears on the interpretation, implementation, or execution of a confirmed plan, then the Bankruptcy Court has subject matter jurisdiction in that context. And it sure sounds like, hearing Mr. Terry's version of things today, which sounded very credible, that this is potentially impinging on the reorganization and plan of Acis.

So it's very troubling to me that — well, I've said it before in Highland hearings, that these battles just continue on, but if it's impairing with a plan I confirmed, it's impairing a plan I confirmed, it's impairing the ability to perform under that plan, then that is a problem for the plaintiffs.

Now I've heard there is no pending litigation in that regard, but I'm troubled by the April 2020 letter I saw that is essentially a suggestion we may start this up again, the litigation that we dismissed. It's just ridiculous, for lack of a better term, that Dondero and his entities would be doing some of the things it sounds like they're doing: Suing Moody's, for crying out loud, for not downgrading the Acis CLOs. If Mr. Dondero doesn't think that is so transparently vexatious litigation, yeah, I'm going out there and saying that. I haven't seen it, but, come on.

So, bottom line, I don't find the 107 standard here is met today, so I am denying entirely the motion. I haven't been convinced that this is commercial information that 107(b) justifies redacting or sealing. But, again, I am most troubled by what I've heard today.

I have found Mr. Terry to be a very credible witness today on these points. He's testified in this Court many times and I continue to find him a very credible witness.

And so to the extent Mr. Dondero is listening or gets

a transcript, I hope it's loud and clear to him that to the extent you are engaging in efforts surreptitious or overt to derail Acis in its reorganization, there is going to be a price to pay for that. So I hope that message gets to him.

Very troubled, very troubled by what I've heard today.

All right. Well, I think that concludes our business here today. Is there anything else anyone wants to raise?

MS. LAMBERT: Judge Jernigan, Ms. Lambert for the U.S. Trustee. Would you like me to prepare an order just as for the reasons stated?

THE COURT: I would like you to do that. Thank you very much. All right.

MS. LAMBERT: And I think I will order the — I think I will order the transcript and have it sent to Mr. Lynn.

THE COURT: All right. Thank you.

(The hearing was adjourned at 5:21 o'clock p.m.)

—o0o—

State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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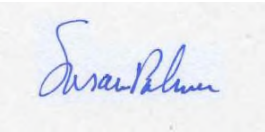

Susan Palmer
Palmer Reporting Services

Dated September 26, 2020

EXHIBIT H

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11** Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., Debtor.	Dallas, Texas Wednesday, October 21, 2020 10:00 a.m. Docket MOTION TO COMPROMISE CONTROVERSY WITH ACIS CAPITAL MANAGEMENT [1087] *Continued from 10/20/2020*

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

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For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For Acis Capital Management GP, LLC:	Annmarie Antoinette Chiarello WINSTEAD, P.C. 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 (214) 745-5250
For Acis Capital Management GP, LLC:	Brian Patrick Shaw ROGGE DUNN GROUP, P.C. 500 N. Akard Street, Suite 1900 Dallas, TX 75201 (214) 239-2707

motion that ever comes before it.

I daresay that Mr. Terry and Ms. Patel and Mr. Shaw firmly believe that their client has been wronged and that they're entitled to $75 million or more. Thankfully, they were able to check their egos at the door and come to an agreement, I guess, that they believe represents a fair and reasonable compromise.

So I understand that while -- that Mr. Dondero embraced and appreciated the arguments that the Debtor made in its pleading, but the fact of the matter is the Debtor came to a position when it had the choice of either going forward with that litigation, with all of the costs and risks and uncertainty that were described, or taking this settlement. And it came to the -- I believe the record shows -- the very considered and reasonable decision to end all of the litigation with Acis on the terms set forth in the agreement.

And I just wanted to kind of -- that doesn't go to any of the particular -- necessarily go to any of the particular elements of the legal standard, but so much time was spent trying to tie Mr. Seery and the Debtor to the objection, and I think -- I think it's important for the Court to look at this in context.

And frankly, there are other very substantial claims out there. And Mr. Seery was very clear that each case is going to be judged on its own merits. And just because we've

settled a case where we put forth a strong legal position here, it's only because we got to terms that the Debtor felt were fair and reasonable. We've taken -- and parties do this all the time. They take their litigation position and we're going to take our litigation position. But when it comes to settlement, you have to view: What are the alternatives? And that's all Mr. Seery did. That's what the board did, servant of their fiduciary duties.

And I'm going to talk in a few minutes about the benefits to the estate that this settlement entails, but I just -- I was a little surprised that anybody would try to say that because we took a position in litigation we're not allowed to compromise that position. Because if that were the standard, Your Honor, no 9019 would ever be approved, because, by definition, 9019s are compromises.

So let me turn for a moment now to the actual elements of the standard under 9019. The first one is the probability of success on the merits. As I said, Mr. Seery felt strongly about the position, but he also articulated some very, very specific concerns, from *Mirant* to the Court's views on equities that may not be -- the Court may not share our views on equities. The Court may not share. The Court has a lot of experience with these particular litigants. The Court has already assessed the credibility of certain witnesses in relation to the claims at issue in this matter. The Court has

already rendered decisions with respect to certain aspects of this matter. And so the Debtor took all of those things into account in assessing the probability of success on the merits, and that's all very much in the record.

But I did want to point to one other piece of evidence that hasn't been discussed yet, and that is Professor Rapoport's expert report that has now been admitted into evidence. You know, I question the weight that the Court should give, but never -- only because I'm not sure how -- the depth of the opinion. But nevertheless, Professor Rapoport specifically says at the top of Page 5, on Page 13, at the very end of her opinion as to Question 1, she says, in substance, if the Court follows *Mirant* and otherwise finds that damages would benefit the Acis estate, then the Acis claim, valued by Acis at least $75 million, could have significant value. Still, that value would depend on how the Court found -- how the facts fall after the Court hears testimony and is able to weigh the evidence.

That's kind of what Mr. Seery did. So I'm not even sure that there's a dispute, frankly, over the probability of success. Nobody has quantified it. Nobody asked Mr. Seery to quantify it. We haven't gone down that path.

But Professor Rapoport, in her very first opinion, said: Could be zero, could be $75 million or more. It depends on where the Court comes out.

consistent with the Bankruptcy Rules. The notice was given on September 23rd, so we're certainly good from notice and opportunity to be heard, from that standpoint.

As we all know and as I went through yesterday in ruling on the Redeemer Committee settlement, I am consulting Bankruptcy Rule 9019 as well as the abundance of jurisprudence that tells bankruptcy courts how they are to evaluate compromises and settlements: Cases such as *AWECO*, *Jackson Brewing*, *TMT Trailer*, *Cajun Electric*, and *Foster Mortgage*, significantly, among the cases.

I am to look at, obviously, whether the proposed compromise is fair and equitable and in the best interest of creditors when considering probability of success in future litigation, with due consideration for the uncertainty of law and fact; when considering the complexity and likely duration of future litigation and any attendant inconvenience and delay; and all other factors bearing on the wisdom of the compromise.

Case law also talks about the Court probing into whether a settlement is within the range of reasonableness, and obviously the Court should consider the paramount interests of creditors.

So, here, giving all due consideration of the record before me and the very eloquent arguments, I am going to approve the compromise today.

I'm going to turn for a moment to Mr. Seery's testimony. Just as I found his testimony to be very credible with regard to the Redeemer Committee settlement, I once again found it to be very credible and compelling in connection with the Acis and Terry settlements.

Among other things, I believe his testimony reflected a deep understanding of the risks and rewards of further litigation and the uncertainty that there was in both the law and the fact. He mentioned his understanding of the *Mirant* holding and how that absolutely posed some risks for the estate in challenging the claims of the reorganized Acis. He mentioned what I consider significant due diligence that he performed. He mentioned not only reading many of the rulings of this Court throughout the tortured history of the Acis bankruptcy, but he mentioned meeting with the board members. In fact, meeting with Mr. Terry and Acis's professionals. He picked out certain of the issues, the fact issues, the $10 million note transfer that was argued to be a fraudulent transfer. He described the disputes regarding the changing of the fee structure imposed by Highland or Highland entities on Acis, and he expressed concerns regarding the cost of litigating all of that.

He spoke in depth about Mr. Terry's claims regarding his retirement funds, and said he thought it was a pretty straightforward win for the Terrys that he thought should have

been settled years ago for full value.

He mentioned his knowledge about the Guernsey litigation, that being a jurisdiction where loser pays. So that was sort of an open-shut one as far as he was concerned. And he talked about the Acis GP proof of claim in some depth, regarding the lawsuits in New York.

So, again, I find that he was very compelling and his testimony reflected significant due diligence.

Now, the next thing I want to highlight that is very compelling to me in deciding I should approve this settlement is -- and I probably should have mentioned this first and foremost -- this was a mediated settlement. This is certainly some indication of its good faith and arm's-length nature, and certainly is a point in favor of the wisdom of the settlement, given that we had two very respected co-mediators, retired Judge Gropper from the Bankruptcy Court of the Seventh District of New York. Ms. Mayer was a partner at Weil Gotshal with a very impressive career background. And so it, again, it is a point very much in favor of the *bona fides* of this settlement. So I cannot overstate that one.

A few other points I will make. In looking at the risks and rewards and likely expense and inconvenience of further litigation, while Professor Rapoport estimated maybe $350,000 to $1.1 million of fees might be incurred for future litigation of the issues between Highland and Acis, and while

I respect her views tremendously -- I know she's been a fee examiner in many, many cases and really has some *bona fides* in speaking about fees in bankruptcy cases -- I tend to think that is an extremely low estimate. And I can't separate from this analysis my own experience and knowledge with how litigious and expensive things have historically been between Acis and Highland.

I cannot remember the final fee application amounts of the Chapter 11 Trustee and his professionals, but I know that in a year-plus of the Acis case, the fees were much, much larger than this amount, and I seem to remember that at least Foley Lardner had a very, very large unsecured claim in this case related to its fees representing *Highland v. Acis*, millions of dollars.

So, with complete respect to Professor Rapoport, I believe with all my heart that that number is way, way low as far as future fees and expenses.

And as Ms. Chiarello pointed out and I think Mr. Morris pointed out, we don't actually have evidence of Mr. Dondero's willingness to pay legal fees for fights of *Highland v. Acis*. While certainly I believe one hundred percent that Mr. Lynn was told that Dondero would pay those fees and he has every reason to believe him, I just don't have the equivalent of evidence there that I can point to, evidence being Mr. Dondero testifying that he would do that and maybe putting something

else in front of me to show a commitment.

So I again will turn to Ms. Rapoport's report. While she used words to the effect of, you know, she thought challenging this would be a reasonable endeavor, I think that, all in all, Mr. Seery was just very credible in his evaluation of things and his strong feeling from the beginning that we're going to fight this, it should be zero, and then as he did his due diligence, as he looked at some of the issues -- and I will point out that Professor Rapoport identified 16 issues of law this Court would have to determine, in her estimation, and then there could be potentially 12 fact issues the Court might have to rule on, depending on how I ruled on the 16 issues of law. I don't think I could do that as swiftly as maybe this case needs and deserves to get on its way to reorganization, and I do think the settlement enhances the likelihood of confirmation of a plan in the near future. While we may have miles to go before we get there, I think this settlement is a step in the right direction, just like the settlement with the Redeemer Committee is a step in the right direction. And that's a big factor in my mind. I'm supposed to look at all factors bearing on the wisdom of the compromise, and I think the compromise enhances the prospect of a reorganization sooner rather than later.

All right. I reserve the right to supplement in more detailed findings and conclusions, but Mr. Morris, I'm going

THE COURT: All right.

MR. KHARASCH: If we need more time, obviously, we will be letting you know.

THE COURT: All right. So, rescheduled for 10:30 tomorrow morning. And if there's nothing further, we're adjourned. Thank you.

MR. KHARASCH: Thank you, Your Honor. Appreciate it.

THE CLERK: All rise.

(Proceedings concluded at 11:26 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **10/24/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT I

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	December 10, 2020
	9:30 a.m. Docket
Debtor.	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	**Adversary Proceeding 20-3190-sgj**
Plaintiff,	- MOTION FOR PRELIMINARY INJUNCTION
v.	- MOTION FOR TEMPORARY RESTRAINING ORDER
JAMES D. DONDERO,	
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Plaintiff:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Plaintiff:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Chicago, IL 60603 (312) 853-7539

THE COURT: Yes.

MR. BONDS: Can I have a second? Mr. Dondero did apologize to counsel and to Mr. Seery as well, and so the idea that Mr. Dondero has not apologized is not entirely correct.

THE COURT: Okay. Well, if I misunderstood, I apologize. But I guess what I was really trying to convey is, in a situation like this, I think coming into court and taking his lumps and saying things under oath might have been a better way to proceed.

I guess the second thing I want to say is I wish Mr. Dondero was here, because maybe I'm reading this wrong, but I think he needs to hear and know he is not in charge anymore of Highland. It may have been his baby. He may have created its wealth. But when he and the board made the decision to file Chapter 11, number one, that changed everything. And then number two, when the Committee was formed and was threatening "We think we need a Chapter 11 trustee because of conflicts of interest of Mr. Dondero and others," and when the Committee negotiated something short of that with the Debtor in January 2020, you know, a settlement that involved Mr. Dondero no longer being in charge, no longer being CEO, no longer having any role except portfolio manager with the Debtor, and when various protocols were negotiated, heavily negotiated, for weeks, detailed, complex protocols, life changed even further. It changed when he filed Chapter 11, when he put his baby,

Highland, in Chapter 11, and then it changed further in January 2020 when this global corporate governance settlement was reached. As we know, it involved independent new board members coming in and eventually a new CEO. He's not in charge.

Now, that doesn't mean he's not a party in interest, and he can certainly weigh in with pleadings in the bankruptcy court. But these communications that I've admitted into evidence, and the declaration, the sworn declaration of Mr. Seery, suggest to me that he's not fully appreciating that, sorry, you're not in charge. And when you chose to put the company in bankruptcy because of the overwhelming debt, it started a cascade of events, so that now I'm depending on a debtor-in-possession with a new board and a new CEO and a Committee of very sophisticated members and professionals who are working in tandem with the Debtor to be in charge, basically. All right? So that's another thing I just feel compelled to say for Mr. Dondero's benefit.

I guess another thing is there was a little bit of a theme, Mr. Bonds, in your comments that Mr. Dondero is just concerned, more than anything else, about the way employees are being treated, or at least that's a major concern. And I don't find that to be especially compelling. I mean, maybe if he was sworn under oath and testified, I would believe that, but it doesn't feel like what's really going on here. Again,

he took the step of deciding that the company should file Chapter 11. We had the change in corporate governance in January. And he has the ability -- everyone, I think, would very much be interested in a plan that he supports. You know, he wants to get the company back. That has been made clear in hearings from time to time, and I believe, from Seery's declaration and Highland's lawyers, that they've been and will remain receptive to Mr. Dondero's ideas for a different type of plan that might allow him to get back into control of Highland, if he puts in adequate consideration that makes the Committee and others happy.

But we're in a proverbial the-train-is-leaving-the-station posture right now. Okay? We've got confirmation coming up the second week of January or something like that. Okay. So the train is leaving the station, so we're running out of time to hear what Dondero might want to do as far as an alternative plan.

So, as far as the requested TRO, I appreciate that Mr. Dondero and his counsel are worried about some ambiguity, but I'm looking through the literal wording that has been proposed, and the wording proposed is that Dondero is temporarily enjoined and restrained for communicating, whether orally, in writing, or otherwise, directly or indirectly, with any board member, unless Mr. Dondero's counsel and counsel for the Debtor are included in such communications. Not ambiguous

Court next Wednesday, he needs to testify. And if NexPoint, through whoever their decision-maker is, is wanting to urge a position to the Court, they need a human being to testify. And I'll hear Seery and I'll hear Dondero and I'll hear whoever that person is, and that's what's going to matter, you know, most to me. Yeah, we have some legal issues, certainly, but I like to hear business people explain things, no offense to the lawyers. But it's always very helpful to hear the business people in addition to the lawyers. All right. So, Mr. Morris, you're going to upload that TRO for me.

MR. MORRIS: Yes, Your Honor.

THE COURT: Mr. Wright, you can upload your order setting your motion for hearing next Wednesday at 1:30. And I think we have our game plan for now. Anything else? All right. We're adjourned.

THE CLERK: All rise.

(Proceedings concluded at 11:33 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript to the best of my ability from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/11/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT J

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Wednesday, December 16, 2020
	)	1:30 p.m. Docket
Debtor.	)	
	)	- MOTION FOR ORDER IMPOSING TEMPORARY RESTRICTIONS [1528]
	)	- DEBTOR'S EMERGENCY MOTION TO QUASH SUBPOENA AND FOR ENTRY OF PROTECTIVE ORDER [1564, 1565]
	)	- JAMES DONDERO'S MOTION FOR ENTRY OF ORDER REQUIRING NOTICE AND HEARING [1439]
	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539

The Movants are not parties to those agreements. The testimony is undisputed that there are many holders of preferred shares and notes that have had no notice of this proceeding that will undoubtedly be impacted by the tying of the hands of the portfolio manager. The chart that was attached as Exhibit B expressly shows just what a large portion of interested parties and people who would be affected by this motion are not -- they didn't get notice. There was no attempt to get notice. There was no attempt to get their consent. All of that testimony is now in the record, and I think due process alone would prevent the entry or even the consideration of an order of this type.

There is nothing improper that's been alleged. There is no -- there is no allegation of fraud. There is no allegation of breach of contract of any kind. There's not even a question of business judgment. The Movants didn't even do their diligence to ask the Debtor why they made these transactions. There is nothing in the record that shows that the Debtor, as the portfolio manager of the CLOs, did anything improper.

The only thing that the Movants care about is that they don't like the results in two particular trades. I don't think that that meets their burden of persuasion that the Court should enter an order of this type, and I would like to relieve Mr. Seery of the burden, frankly, and the Court, of

having to put on testimony to justify transactions that really aren't even being questioned, Your Honor.

So the Debtor would respectfully move for the denial of the motion and the relief sought therein.

THE COURT: All right. Your request for a directed verdict, something equivalent to a directed verdict here, is granted. I agree that the Movant has wholly failed to meet its burden of proof here today to show the Court, persuade the Court that, as Mr. Morris said, I should essentially tie the hands of the Debtor as a portfolio manager here, as stated. Nothing improper has been alleged. There has been no showing of a statutory right here, or a contractual right here, on the part of the Movants.

I am -- I'm utterly dumbfounded, really. I agree with the -- I was going to say innuendo; not really innuendo -- I agree with part of the theme, I think, asserted by the Debtor here today that this is Mr. Dondero, through different entities, through a different motion. I feel like he sidestepped the requirement that I stated last week that if we had a contested hearing on his motion, Dondero's motion, that I was going to require Mr. Dondero to testify. He apparently worked out an eleventh hour agreement with the Debtor on his motion to avoid that. But, again, these so-called CLO Motions very clearly, very clearly, in this Court's view, were pursued at his sole direction here.

This is almost Rule 11 frivolous to me. You know, we're -- we didn't have a Rule 11 motion filed, and, you know, I guess, frankly, I'm glad that a week before the holidays begin we don't have that, but that's how bad I think it was, Mr. Wright and Mr. Norris. This is a very, very frivolous motion. Again, no statutory basis for it. No contractual basis. You know, you didn't even walk me through the provisions of the contracts. I guess that would have been fruitless. But you haven't even shown something equitable, some lack of reasonable business judgment.

Bluntly, don't waste my time with this kind of thing again. You wasted my time. We have 70 people on the video. Utter waste of time.

All right. So, motion is denied. Mr. Morris, please upload an order.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. Do we have any other business to accomplish today?

MR. POMERANTZ: I don't think so, Your Honor. I know we will see you tomorrow in connection with Mr. Daugherty's relief from stay motion.

THE COURT: Well, yeah, we do have that. Okay. We will see you tomorrow. We stand adjourned.

MR. CLEMENTE: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 3:05 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **12/17/2020**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT K

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Friday, January 8, 2021
	)	9:30 a.m. Docket
Debtor.	)	
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	**Adversary Proceeding 20-3190-sgj**
	)	
Plaintiff,	)	PRELIMINARY INJUNCTION
	)	HEARING [#2]
v.	)	
	)	
JAMES D. DONDERO,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor/Plaintiff: Jeffrey N. Pomerantz
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10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor/Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

David Klos, who is the person who put the model together, who has been working on it for six or nine months, and no one else S has a copy of? Yes. Yeah, I have to -- I have to access him. I don't believe that's the -- inappropriate or in any way violating the spirit of the TRO.

I believe settlement in this case is only going to happen with somebody fostering communication. And Ellington's role, which I thought was a good one and I thought he was performing well as settlement counsel, was an important role. And I used him for things like -- and Seery also used him for things. As recently as two days before Ellington was fired, Seery gave him a shared services proposal to negotiate with me. Ellington has always been the go-between from a settlement and a legal standpoint. I think his role there was -- it was valued. To try to honor the TRO was things like Multi-Strat, that I didn't remember correctly. Ninety percent of the time or for the last 20 years I would have gone directly to Accounting and Dave Klos for it, but I purposely went to settlement counsel in terms of Ellington in order to get the Multi-Strat information which we needed in order to put the pot plan together that we went to the Independent Board with at the end of December.

Q (faintly) And do you recall the questions that Debtor's counsel had regarding the letters sent by K&L Gates to clients of the Debtor?

MR. MORRIS: I'm sorry, Your Honor. I had trouble hearing that question.

THE COURT: Please repeat.

MR. BONDS: Sure.

BY MR. BONDS:

Q Do you recall the questions Debtor's counsel had regarding the letters sent by K&L Gates to the clients of the Debtor -- to the Debtor?

A Yes.

Q You testified on direct that the letters were sent to do the right thing; is that correct?

A Yes.

Q What did you mean by that?

A I don't want to repeat too much of what I just said, but the Debtor has a contract to manage the CLOs, which in no way is it not in default of. It doesn't have the staff. It doesn't have the expertise. Seery has no historic knowledge on the investments. The investment staff of Highland has been gutted, with me being gone, with Mark Okada being gone, with Trey Parker being gone, with John Poglitsch being gone.

And there's -- there's a couple analysts that are a year or two out of school. The overall portfolio is in no way being understood, managed, or monitored. And for it to be amateur hour, incurring losses for no business purpose, when the investors have requested numerous times for their account

not to be traded, is crazy to me. Where the investors say, We just want our account left alone. We just want to keep the exposure. And Jim Seery decides no, there's -- I'm going to turn it into cash for no reason. I'm just going to sell your assets and turn them to cash and incur losses by doing it the week of Thanksgiving and the week of Christmas. I think it's -- it's shameful. I'm glad the compliance people and the general counsel at HFAM and NexPoint saw it the same way. I didn't edit their letters, proof their letters, tell them how to craft their letters. They did that themselves, with regulatory counsel and personal liability. They put forward those letters.

MR. MORRIS: Your Honor (garbled) the testimony that Mr. Dondero just gave about these people saw it. They're not here to testify how they saw it. We know that Mr. Dondero personally saw and approved the letters before they went out. He can testify what he thinks, what he believes. I have no problem with that. But there should be no evidence in the record of what the compliance people thought, believed, understood, anything like that. It's not right.

THE COURT: All right. That's essentially a --

MR. BONDS: Your Honor?

THE COURT: -- a hearsay objection, I would say, or lack of personal knowledge, perhaps. Mr. Bonds, what is your response?

MR. BONDS: Your Honor, my response would be that there are several exhibits the Debtor introduced today that stand for the proposition that the compliance officers were concerned. So I think there is ample evidence of that in the record.

THE COURT: I didn't --

MR. MORRIS: Your Honor, the letter --

THE COURT: I did not understand what you said is in the record. Say again.

MR. BONDS: Your Honor, I'm sorry. The -- there are -- there are references that are replete in the record that have to do with the compliance officers' understanding of the transactions.

THE COURT: I don't know what you're referring to.

THE WITNESS: Your Honor?

THE COURT: I've got a lot of exhibits. You're going to have to point out what you think --

THE WITNESS: Can I -- can I -- can I -- can I answer for -- that for a second? The letters that were signed by the compliance people or by the businesspeople at NexPoint and HFAM objecting to the transactions, those letters were their beliefs, their researched beliefs. They weren't --

THE COURT: Okay.

THE WITNESS: -- micromanaged by me. You know, they weren't -- I agree with them, but those weren't my beliefs

that they've stated. Those were their own beliefs and their own research, --

THE COURT: All right.

THE WITNESS: -- and the record should reflect --

THE COURT: This is clearly hearsay. I mean, it's one thing to have a letter, but to go behind the letter and say, you know, what the beliefs inherent in the words were is inadmissible. All right? So I strike that.

THE WITNESS: Maybe ask your question again.

BY MR. BONDS:

Q Yeah. What is your understanding of the rights that these parties had and what do you believe that was intended to be conveyed by the compliance officers?

MR. MORRIS: Objection. Calls -- calls for Mr. Dondero to divine the intent of third parties. Hearsay.

THE COURT: I sustain.

MR. BONDS: Your Honor, --

MR. MORRIS: No foundation.

MR. BONDS: -- I don't agree. I think that this is asking Mr. Dondero what he thinks.

MR. MORRIS: The letters speak for themselves, Your Honor.

THE COURT: Okay. I sustain --

MR. MORRIS: And Mr. --

THE COURT: I sustain the objection.

MR. MORRIS: All right. Thank you.

THE WITNESS: Ask me what I know. Or ask me what my concerns --

BY MR. BONDS:

Q Let me ask you this. What were your concerns relating to the compliance officers' exhibit?

A My concerns regarding the transaction, the transactions, which may repeat what I've said before, but I do want to make sure it gets in the record. So if we have to make a -- these were my concerns, whether or not they were the compliance people's concerns. I believe they were, and I believe they were similar, but I'm just going to say these are -- these were my concerns.

The Debtor, with its contractual -- with its contract with the CLOs, were in no way -- was in no way compliant with that contract or not in default of that contract. Bankruptcy is a reason for default. Not having the key men specified in the contract currently employed by the Advisor is a violation. Not having adequate investment staff to manage the portfolio is a violation of that contract. Announcing that you're laying off everybody and will no longer be a registered investment advisor is proclaiming that you, if you even have any -- any -- pretend that you're qualified or in compliance with the contract now, you're broadcasting that you won't be in three weeks, are -- are all mean that you're not in good

MR. BONDS: Thank you, Your Honor.

(Proceedings concluded at 4:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/11/2021**

_____ _____

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

EXHIBIT L

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	)	**Case No. 19-34054-sgj-11**
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Dallas, Texas
	)	Tuesday, January 26, 2021
	)	9:30 a.m. Docket
Debtor.	)	
	)	MOTION FOR ENTRY OF ORDER
	)	AUTHORIZING DEBTOR TO
	)	IMPLEMENT KEY EMPLOYEE
	)	PLAN [1777]
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	**Adversary Proceeding 21-3000-sjg**
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION FOR A
	)	PRELIMINARY INJUNCTION AGAINST
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., et al.	)	CERTAIN ENTITIES OWNED AND/OR CONTROLLED BY MR. JAMES DONDERO [5]
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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(310) 277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

can't talk them about specifically, but they're at least 20 percent better than what the Debtor has put forward as far as a plan. And what we put forward is elegant, it's simpler, it treats the employees fairly, it gives the business continuity, it gives investors continuity, and it's not just a harsh, punitive liquidation that's going to end up in a myriad of litigation.

We're paying a premium, it's a capitulation price, to try and get to some kind of settlement. And I encourage you to look at it. It's elegant. It's straightforward. It's simple. And now that you've encouraged and gotten us up to a number that's well in excess of the Debtor, maybe a little pressure on other people to treat employees fairly, maybe not liquidate a business that's important in Dallas, that has been a big business for a number of years, doing enormous good things for a lot of people.

You know, we went into bankruptcy with $450 million of assets and almost no debt. And we've been driven into the ground by the process. And then the plan is to just harshly liquidate going forward. I -- I -- it's crazy. I don't know what else to do to stop the train other than what we've offered.

THE COURT: All right. Well, I hear what you're saying, and I do, just because -- I don't know if you left the room or not, but we did have discussion of Section 206 of the

Investment Advisers Act today. It was put on the screen. Mr. Post was asked what was unlawful as far as what had happened here, what was going on here, what was fraudulent, deceptive, or manipulative, in parsing through the words of the statute. And he said Mr. Seery engaged in deceptive acts because he wasn't trying to maximize value. Okay? I'm not an expert on the Investment Advisers Act, but I know that that was not a deceptive act.

And so I'll allow the plan to be filed under seal, but it's not going to be unsealed absent an order of the Court. Okay? So we'll just leave it at that for now. And while I still encourage good-faith negotiations here, I've said it umpteen times, where you're tired of the cliché, probably: The train is leaving the station. And if you want the Court to have patience in the process and if you want the parties to cooperate in good faith, it might help if we didn't have things like Dugaboy and Get Good Trust filing a motion for an examiner 15 months into the case.

I mean, it feels to me, Mr. Dondero, whether I'm right or wrong, that it's like you've got a twofold approach here: I either get the company back or I burn the house down. And I'm telling you right now, if we don't have agreements, --

MR. DONDERO: That's not true.

THE COURT: -- if we don't have agreements and we come back on the 5th for a continuation of this hearing and a

motion to hold you in contempt, you know, I'm leaning right now, based on what I've heard so far, and I know I haven't heard everything, but I'm leaning right now towards finding contempt and shifting a whole bundle of attorneys' fees. That, to me, seems like the likely place we're heading.

I mean, I commented at the December hearing on the preliminary injunction against you personally that it had been like a $250,000 hearing, I figured, okay, just guesstimating everybody's billable rate times the hours we spent. Well, here we were again, and I know we've got all this time outside the courtroom preparing, taking depositions. I mean, what else is a judge to think except, by God, let's drive up administrative expenses as much as we can; if we can't win, we're going to go down fighting? That's what this looks like. Okay? So if it's not really what's going on, then you've got to work hard to change my perceptions at this point.

MR. RUKAVINA: Your Honor, I hear everything what you're saying, and I'm going to discuss it very bluntly with my clients. But we're being asked not to exercise contract rights in the future. This is not a contempt hearing. And Your Honor, we did ask and offered the estate a million dollars, found money, plus to waive almost all our plan objections, if they would just put this case on pause for 30 days.

So we are trying. We are trying creative solutions here.

We know that the train is leaving. We've put our money where our mouth is. We will continue trying. But Your Honor, this is not a contempt proceeding, and my clients are not Mr. Dondero. You've heard they're independent boards.

MR. POMERANTZ: I can't leave that last comment without a response. Yes, there was an offer of a million dollars, by an entity that owes the estate multiples of that. So they are offering to pay us something that they already owe us. So Mr. Rukavina continues try to do this. We will not stand for it.

MR. RUKAVINA: That is not a fair statement, sir. I misrepresented nothing. We were offering you a million dollars, with no conditions, earned upon receipt, with no credit, no deduction for any of our liability. So you're free to say no, sir, but you're not going to tell the judge that I misrepresented something.

THE COURT: All right.

MR. POMERANTZ: Should tell the Court --

THE COURT: You know what?

MR. POMERANTZ: -- that that entity owed the Debtor.

THE COURT: You know what? You know what? I am more focused on, Mr. Rukavina, your comment that this Court can't enjoin your clients from exercising contractual rights when, again, in January of 2020, the representation was made and it was ordered, "Mr. Dondero shall not cause any related entity

to terminate any agreements with the Debtor." Okay? That was -- go back and look at the transcript. That was so meaningful to me.

We were facing a possible trustee. And that's what I did in the *Acis* case. Okay? I had a Chapter 11 trustee. And it was not a perfect fit, to be sure. But it is where we were heading in this case, had the lawyers and parties not negotiated what they did. That was a very important provision, convincing me that, you know what, I think the structure they've got will be better than a trustee. And it has, for the most part. But the fees have gone out the roof, and I lay that at the feet of Mr. Dondero, for the most part. Okay? We have a bomb thrown every five minutes by either him personally or the Dugaboy or the Get Good Trust or the Funds or the Advisors or I don't know who else. Okay?

So the train is leaving the station, unless you all come to me and say, okay, we've maybe got a -- Mr. Pomerantz's word -- grand solution here. Okay? If you get there in the next few days, wonderful. Okay? But I don't know what else to say except I'm tired of the carpet-bombing, and if I had to rule this minute, there would be a huge amount of fee-shifting for what we went through today, for what we went through in December, for the restriction motion that, after I called it frivolous, the lawyers were sending letters pretty much regurgitating the same arguments. All right. So, not a happy

camper.

But upload your order on the motion to seal the plan. And, again, it's not going to be unsealed absent a further order of the Court. And if you all come to me next week and say, hey, we've got something in the works here, okay, I'll consider unsealing it and letting you go down a different path. But I'm not naïve. I feel like this is just more burning the house down, maybe. I don't know. I hope I'm wrong. I hope I'm wrong. But all right. So I guess we'll see you next week.

MR. POMERANTZ: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. We're adjourned.

MR. RUKAVINA: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 6:08 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **01/28/2021**

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Kathy Rehling, CETD-444 Date
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MR. POMERANTZ: Thank you, Your Honor.

MR. MORRIS: Thank you, Your Honor.

THE COURT: All right. We're adjourned.

MR. RUKAVINA: Thank you, Your Honor.

THE CLERK: All rise.

(Proceedings concluded at 6:08 p.m.)

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